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16th meeting of the Committee of the Whole

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16th meeting

Friday, 11 March 1983, at 3.05 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 14 (Newly independent State) (*concluded*)

1. The CHAIRMAN invited the Committee to vote on the amendment to paragraph 1 of article 14 submitted by the United Kingdom (A/CONF.117/C.1/L.19).

The amendment was rejected by 41 votes to 19, with 2 abstentions.

2. The CHAIRMAN invited the Committee to vote on the amendment to paragraph 4 of article 14 submitted by the Netherlands (A/CONF.117/C.1/L.18).

The amendment was rejected by 40 votes to 21, with 1 abstention.

3. The CHAIRMAN invited the Committee to vote on draft article 14 as proposed by the International Law Commission.

Draft article 14, as proposed by the International Law Commission, was adopted by 43 votes to 21, and referred to the Drafting Committee.

4. Mr. PIRIS (France) said that his delegation had voted in favour of the amendments submitted by the United Kingdom, and by the Netherlands. Although it felt that those amendments were not altogether perfect and that they could certainly have been improved during the discussion, they were nevertheless acceptable to his delegation, whereas the text of article 14 as currently worded was not. His delegation had therefore voted against the text of article 14 as drafted by the International Law Commission, on the grounds that it was neither legally necessary nor justifiable and that it tried to introduce unacceptable inequities among countries and peoples by means of rules of succession in respect of State property differing from those for other cases of succession. Furthermore, it failed to recognize that succession should be governed first and foremost by agreement between the predecessor and the successor States, which was one of the principal merits of the amendment submitted by the United Kingdom.

5. Again, the wording of paragraphs 1 and 4 was unacceptable, because it did not correspond either to practice or to law. In that connection, his delegation was surprised at the refusal to make any reference to conformity with international law and could not agree with the view expressed in some quarters that because it was not clear what international law was applicable it should not be mentioned. He pointed out, among other examples, that Article 38 of the Statute of the International Court of Justice provided that the Court should decide, "in accordance with international law", such disputes as were submitted to it.

6. His delegation also reiterated its disagreement with the contention that certain decisions or resolutions of the General Assembly of the United Nations could have a binding legal force.

7. In short, the French delegation considered that it might perhaps have been possible to find a compromise wording for article 14, paragraph 4, based on article 1 of the 1966 International Covenant on Economic, Social and Cultural Rights[1] for example. It was in that spirit that the Netherlands amendment had been submitted.

8. In fact, as many speakers had pointed out, article 14 constituted an attempt to establish treaty law; it was not a question of codification. The provisions of article 14 clearly did not correspond either to "absolute, binding rules" which, according to some, existed under international law, or to international custom as evidence of a general practice accepted as constituting law. In any event, such provisions could be considered as binding only on contracting States parties to the convention, which would have to deal in the future with cases of succession of States corresponding to that article.

9. Finally, his delegation felt it was indispensable that the text of article 14 should be further considered in the time remaining before the end of the Conference if there was a common will to produce a generally accepted wording.

10. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation had voted in favour of article 14, as proposed by the International Law Commission, and against the amendments submitted by the United Kingdom and the Netherlands.

11. The adoption of the Commission's draft had convinced his delegation that work on the future convention was proceeding in a realistic and equitable manner. He viewed the explanation of article 14 given by the Expert Consultant as the authorized, indeed even official, interpretation of the text of the article. Nevertheless, he would welcome confirmation of two points: first, that the provisions of article 14, and of paragraph 1, subparagraphs (*c*) and (*f*), in particular, applied not only to States that had been legally and institutionally dependent on another State—the predecessor State—but also to newly independent States that had been controlled by a foreign Power; and, secondly, that because of the overriding nature unanimously assigned to article 14, all agreements on State property concluded between a newly independent State and a foreign Power which had controlled it, by violating the provisions of article 14, were now null and void *ab initio* and did not require prior denunciation by the newly independent State. Thus, article 14 of the draft convention, being later in date and of a specific nature, would,

[1] General Assembly resolution 2200 (XXI).

in his delegation's view, replace the general provisions contained in the 1969 Vienna Convention on the Law of Treaties.

12. Mr. ECONOMIDES (Greece) said that his delegation had voted against article 14 for the sole reason that paragraph 4 contained no explicit reference to international law.

13. Mr. EDWARDS (United Kingdom) said that his delegation had voted against article 14 as proposed by the International Law Commission. His delegation's position on paragraph 1 of the article had already been made clear and he would restrict his explanation to paragraph 4.

14. It was the aim of the United Kingdom to narrow areas of possible friction between developed and developing countries in regard to natural resources. The debate had reinforced his delegation's impression that paragraph 4 went much in the other direction. His country had, of course, accepted references to the principle of permanent sovereignty in other contexts where it was made clear that that principle involved only rights exercised in accordance with international law. His delegation was particularly concerned about statements attributing law-making force to resolutions of the General Assembly such as the Charter of Economic Rights and Duties of States, which a number of countries could not accept and which some, indeed, had voted against, including his own.

15. Mr. MURAKAMI (Japan) said that his delegation had voted in favour of the United Kingdom amendment to paragraph 1 because it had the virtue of stressing the primary importance of agreements concluded between the parties concerned. It had, however, not been fully satisfied with the other parts of the United Kingdom amendment, on which it reserved its position.

16. His delegation had voted against the draft proposed by the International Law Commission because it had difficulty in accepting paragraphs 1 and 4. Since the article had been approved by the Committee despite the opposition of a number of delegations, he wished to place on record his delegation's understanding that paragraph 4 was not to be interpreted as having the effect of nullifying any agreement concluded contrary to its provisions.

17. Mr. TSHITAMBWE (Zaire) said that his delegation had voted in favour of article 14 as proposed by the International Law Commission because its provisions were fully in accord with the basic concept underlying the Committee's deliberations. Paragraph 4 reflected a principle to which his country fully subscribed.

18. It had been argued that there was no link between resolutions adopted by the General Assembly of the United Nations and the work of the International Law Commission. His delegation did not understand how the Commission could work outside the ambit of the General Assembly, and had found the Expert Consultant's references to relevant General Assembly resolutions both appropriate and helpful.

19. Mr. LEITE (Portugal) said that his delegation had voted against article 14. Had the various paragraphs of that article been voted on separately, it would have abstained on paragraphs 1 to 3 and would have voted against paragraph 4, which it could not accept for legal reasons.

20. Mr. MONNIER (Switzerland) said that article 14, as proposed by the International Law Commission, allowed agreements freely entered into to be automatically nullified on the unilateral determination of the successor State. Such a text was unacceptable to his delegation, which had regretfully been obliged to vote against it. Although the principle of sovereignty over resources was recognized in the law of nations, it was not acceptable in the way presented in the article. The Netherlands amendment to paragraph 4 might have provided a solution to the problem.

21. His delegation did not consider the matter closed and hoped that further efforts would be made to reach a compromise.

22. Mr. OLWAEUS (Sweden) said that, although his delegation accepted the general principles underlying article 14, it had regretfully voted against the draft proposed by the International Law Commission because of the legal problem presented by paragraph 4. If a compromise solution to that problem could be worked out, his delegation would be prepared to reconsider its position.

23. Mr. de VIDTS (Belgium) said that his delegation had voted against article 14 because it was unable to accept paragraph 4 of that article. It accepted the principle of permanent sovereignty, which it believed should be exercised in accordance with international law. He hoped that a solution acceptable to all parties could yet be found.

24. Mr. MARCHAHA (Syrian Arab Republic) said that his delegation had voted in favour of article 14 because that article, which took into account the comparatively weak position of newly independent States, would enable them to exercise their sovereignty in fact and consolidate their rights. It thus translated equality from the realm of theory into practice. The concept of preferential treatment of the weaker party was an accepted feature of many legal systems.

25. Mr. TÜRK (Austria) said that his delegation had voted against article 14 as proposed by the International Law Commission. The amendments submitted by the United Kingdom and the Netherlands would have greatly improved the text and, had they been adopted, his delegation would have been able to vote in favour of the article. The negative vote it had cast should not, however, be construed as a rejection of the concepts that had inspired the inclusion of article 14 in the proposed convention. He was aware of the importance many delegations attached to the article but did not consider its wording appropriate. The absence of a reference to international law in paragraph 4 was particularly unfortunate. He trusted that a way might be found to secure broader agreement on a matter which could influence the position of many delegations on the future convention as a whole.

26. Mr. SHASH (Egypt) said that his delegation had voted in favour of article 14 as proposed by the International Law Commission and against the amendments submitted by the United Kingdom and the Netherlands.

27. The principle of the permanent sovereignty of every people over its wealth and natural resources had

been recognized as a rule of law by the International Law Commission, a body in which all tendencies and legal systems were represented. The recognition of such rules was now a right accorded to all countries, and not, as it had been in the past, to a certain group of countries only.

28. Acceptance of the Netherlands amendment had been urged on the ground that that amendment made an explicit reference to international law. The representative of the Netherlands had, however, denied the existence of the rule of permanent sovereignty of peoples over their wealth and natural resources. It was sufficient to compare the text proposed by the International Law Commission, which provided that an important rule of international law should not be infringed, with the Netherlands amendment, which spoke merely of paying "due regard" to international law, to see that support for the Commission's text did not at all imply disregard for international law.

29. With regard to the question whether agreements which were not in accordance with the principle referred to in paragraph 4 could be void *ab initio*, he drew attention to paragraph (30) of the International Law Commission's commentary on article 14.

30. The argument that peoples had no international personality could easily be countered by reference to the Charter of the United Nations.

31. Mr. KOLOMA (Mozambique) said that his delegation had voted in favour of article 14, as proposed by the International Law Commission, because it took into consideration the dynamic character of international law, the disadvantageous position of a formerly dependent territory in negotiating with a colonial Power and the necessity of safeguarding the principle of the permanent sovereignty of the newly independent State over its wealth and natural resources. Observance of that principle was essential for the full exercise by that State of its sovereign rights. It was for those reasons also that his delegation had voted against the amendments proposed by the Netherlands and the United Kingdom.

32. Mr. SUAREZ de PUGA (Spain) said that, although his delegation considered that the future convention could and should deal with the subject-matter of article 14, it had voted against the text submitted by the International Law Commission. It had observed with regret the lack of flexibility shown by some delegations and the absence of real negotiation on the draft article, which would make it difficult for a convention drawn up in such a way to attain the desired degree of universality. As regards paragraph 4, a reference to international law would probably have been sufficient to enable agreement to be reached. He hoped that the Conference would avail itself of the opportunities still remaining to reach agreement on a generally acceptable formulation for article 14.

33. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had voted in favour of article 14 as proposed by the International Law Commission. Paragraph 4 of that text did justice to the successor State by defining State property in a way which did not infringe that State's permanent sovereignty over its wealth and natural resources. The principle of such sovereignty must be taken into account.

34. Mr. SAINT-MARTIN (Canada) said that his delegation had voted against article 14 as proposed by the International Law Commission. It had hoped that a formulation more in line with international practice would be adopted. With regard to paragraph 4 of the article, his delegation could have accepted a text similar to that of article 13 of the 1978 Vienna Convention on Succession of States in Respect of Treaties or an appropriate reference to international law, as had been proposed in the Netherlands amendment. He endorsed the appeals which had been made for a reasonable compromise on article 14.

35. Mr. AL-NASER MUBARAKI (Kuwait) said that his delegation attached great importance to the principle of the permanent sovereignty of every people over its wealth and natural resources. The amendments which had been proposed by the Netherlands and the United Kingdom were not in conformity with the aspirations of developing countries. The text proposed by the International Law Commission for article 14, and particularly its paragraph 4, was an appropriate formulation which his delegation had supported by its vote.

36. The CHAIRMAN announced that the Committee had concluded its consideration of article 14.

Article 15 (Uniting of States)

37. The CHAIRMAN invited the Committee to consider article 15, as proposed by the International Law Commission, and observed that no amendments to that text had been submitted.

38. Mr. BROWN (Australia) said that, in general, article 15 was acceptable to his delegation. He suggested, however, a small amendment to paragraph 1 where, in the English text, the phrase "and so form a successor State" should be altered to read "and so form one successor State", as in article 31, paragraph 1, of the 1978 Vienna Convention on Succession of States in Respect of Treaties.

39. Mr. LEHMANN (Denmark) said that the text of article 15 was generally acceptable but he wondered whether paragraph 2 was not redundant. There was no similar paragraph in the corresponding article 37 relating to State debts, nor did such a provision appear in article 13 or in article 16, paragraph 2. In order to avoid unjustifiable differences between provisions of a similar nature, he suggested that paragraph 2 of article 15 should be deleted.

40. Mr. MURAKAMI (Japan) observed that paragraph 2 of article 15 dealt with the internal allocation of State property within the successor State itself. That matter fell outside the scope of the convention and the presence of paragraph 2 was therefore inappropriate. Furthermore, the paragraph could be erroneously interpreted as meaning that the internal law of the successor State would prevail over any international agreement governing the allocation of State property. Therefore he suggested the deletion of the paragraph.

41. Mr. SUCHARIPA (Austria) said that his delegation had no major problem with article 15 and could accept paragraph 2. However, he agreed with the view expressed by previous speakers that it might be preferable to delete that paragraph as falling outside the scope of the convention.

42. Mr. SHASH (Egypt) asked that the Expert Consultant should be requested to give his views on paragraph 2 of article 15.

43. Mr. BEDJAOUI (Expert Consultant) said that there was a wide variety of possible unions of States, ranging from a unitary successor State to a confederation. According to the form of union selected, the allocation of State property was decided in full sovereignty by the States uniting, usually within the framework of a prior agreement but also occasionally in accordance with the internal law which the new successor State would have promulgated to regulate all outstanding issues not decided before unification. It was desirable that third States or private individuals should be able to recognize the specific authority to which the property of the predecessor States passed, for example, consulates or embassies which benefited from immunity from the jurisdiction of the States in which they were situated. The opening phrase of paragraph 2 referred to paragraph 1, which stated the rule of international law. Paragraph 2 referred to the right of the successor State to settle the allocation of State property as it wished, even if the predecessor States retained a certain measure of international personality. The exact arrangements under internal law were of course no concern of the proposed convention. He had always been reluctant to have references to the internal law of States in conventions of that kind, but it was sometimes desirable. The corresponding article on State debts had no such paragraph because, for the international community, there was only one successor State which was responsible for the debts of the predecessor States.

44. Mr. ROSENSTOCK (United States of America) said there appeared to be no problems of substance with regard to article 15, only some hesitation as to the necessity of paragraph 2 and concern as to whether it might be misinterpreted as going beyond the scope of the convention. He suggested that the matter should be referred to the Drafting Committee, which might consider the desirability of retention of the paragraph, particularly in view of the absence of such a provision in corresponding articles elsewhere in the proposed convention.

45. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had no difficulty with article 15, paragraph 1. With regard to paragraph 2, he agreed with the Japanese representative that it must not be understood as prejudging any prior agreement between the States concerned about future allocation of State property. He also agreed that once the successor State had entered into existence as a sovereign State the matter of the allocation of State property was no longer a question of international law. His delegation could therefore support the deletion of paragraph 2 but it was not opposed to its retention, on the understanding that it constituted a clarification.

46. Mr. JOMARD (Iraq) agreed with previous speakers who had suggested that paragraph 2 did not fall within the scope of an international convention. It was unnecessary to enunciate that all State property became subject to the internal law of the single successor State recognized by the international community.

47. Mr. MONNIER (Switzerland) said that article 15 was acceptable to his delegation as proposed by the International Law Commission. Paragraph 2 was perhaps redundant, but, in the light of the Expert Consultant's explanation, he thought it preferable to retain the paragraph. Some problem might conceivably arise if the new State had the form of a federation or confederation in which the component units had a certain international personality.

48. Mr. ECONOMIDES (Greece) said that his delegation accepted paragraph 1 of article 15, which stated a rule of international law, but agreed with previous speakers that the clarification in paragraph 2 was not only unnecessary but might in fact prove a source of confusion if the predecessor States had regulated the question of the passing of State property in the basic agreement on unification. Furthermore, since such a provision did not appear in the corresponding article 37, paragraph 2 should also be deleted on grounds of symmetry.

49. Mr. CHO (Republic of Korea) said that his delegation found article 15, as proposed by the International Law Commission, satisfactory. He agreed with the arguments that had been advanced in favour of retention of paragraph 2.

50. Mr. LAMAMRA (Algeria) said that delegations appeared to hold no strong views regarding the deletion or retention of paragraph 2. He therefore proposed that, under rule 47, paragraph 2, of the rules of procedure, the text of the article should be referred to the Drafting Committee with the request that it consider the desirability of retaining or deleting paragraph 2, having regard to the merits of the text itself and the absence or presence of a similar text in the corresponding articles relating to State archives and State debts. The Drafting Committee should be requested to submit its views in the form of a recommendation to the Conference for consideration in plenary meeting. At the same time, the Drafting Committee could consider the drafting amendment to the English text of paragraph 1 which had been proposed by the Australian representative.

51. Mr. DELPECH (Argentina) supported the Algerian representative's proposal.

52. Mr. BOCAR LY (Senegal) also supported that proposal. He suggested that the Drafting Committee should consider also what the situation would be in relation to the internal law of the successor State if the predecessor State agreed that the State property should be allocated on a specific basis by international agreement.

Article 15, as proposed by the International Law Commission, and the oral proposal and suggestions relating thereto were referred to the Drafting Committee.

Article 16 (Separation of part or parts of the territory of a State)

53. Mr. RASUL (Pakistan), introducing the amendment to article 16 submitted by his delegation (A/CONF.117/C.1/L.8), said that the words "connected with the activity" in paragraph 1, subparagraph (*b*), were open to conflicting interpretations and would consequently generate disputes. His delegation was no more satisfied with the explanation provided by the International Law Commission in paragraph (11) of

its commentary to articles 16 and 17 than some members of the Commission itself appeared to have been, in spite of the Commission's final decision that the various alternative formulas put forward by those members in order to free the text from ambiguity were themselves not sufficiently clear. His delegation's proposal that the words "connected with the activity of the predecessor State in respect of" in paragraph 1, subparagraph (*b*), be replaced by the words "situated in" had been made solely in the interest of clarity. In the view of his delegation the words "situated in" were open to the least possible number of interpretations.

54. His delegation also considered that the independent presence of subparagraph (*c*) was unnecessary and would create further complications for States in seeking to determine which property would fall under subparagraph (*b*) and which would fall under subparagraph (*c*). Given the nature of State succession, the existence of the latter subparagraph would inevitably delay the amicable resolution of such problems.

55. Furthermore, subparagraph (*c*) had no basis in customary international law. He had been unable to find any example in the commentary to articles 16 and 17 which supported the principle contained in subparagraph (*c*) of entitlement of the successor State to the property in question. Where, therefore, no basis existed in international law for entitlement of the successor State to certain property, the question of equitable proportions did not arise, since equitable proportion referred to a share, which in turn presupposed the existence of the right to a share. The examples cited by the International Law Commission and referred to in paragraphs (14) and (15) of the commentary to articles 16 and 17 were in no way related to paragraph 1, subparagraph (*c*). For example, the Agreement of 23 March 1906 between Sweden and Norway mentioned in the commentary differed from the subject matter of article 16 in that it related to the dissolution of a State and not to the separation of part or parts of the territory of a State. The matter had also been resolved through an agreement, whereas subparagraph (*c*) related to a situation where there was no agreement. The Agreement cited referred, not to an "equitable proportion", but rather to an entitlement to different properties. Furthermore, the observation contained in the last part of paragraph (15) of the commentary was somewhat arbitrarily based, the Commission having relied upon a solitary but unrelated example, when there were many contrary examples. The formulation adopted by the Commission was therefore not based on a convincing argument and was likely to give rise to disputes. It was for all those reasons that his delegation had proposed the deletion of subparagraph (*c*).

56. Another question which the delegation of Pakistan could not allow to pass without comment was not directly related to the amendments which it had proposed, but concerned paragraph (5) of the commentary to articles 16 and 17, in which the International Law Commission had referred to the separation of Pakistan from India as being a case of secession. His delegation strongly resented that categorization, which had an unfortunate history based on an equally unfortunate legal opinion given by the United Nations Office of Legal Affairs, which had considered Pakistan, at the time of its admission to the United Nations, to be a breakaway State. Many States, including Pakistan, had considered that legal opinion incorrect. Secession, as understood in international law, could refer only to an existing State and not to a colony. In that connection, he drew attention to the fact that the word "State" was used in article 16, paragraph 1, of the proposed article 16.

57. The 1947 Indian Independence Act had created two independent dominions, India and Pakistan. The granting of independence through that Act was itself sufficient evidence to determine the status of British India as a colony. Consequently, Pakistan could in no way be categorized as a breakaway or a secessionist State. For that to be true, either the Indian Independence Act of 1947 would have had to create two dominions out of a colony known as British India, or else British India would have had to be an independent State. In fact, Pakistan had achieved independence one day before India.

58. In conclusion, his delegation requested that a separate vote be taken on each of the amendments it had proposed.

59. Mr. AL-KHASAWNEH (Jordan) said that his delegation considered paragraph 1, subparagraph (*b*), of article 16 vague and capable of improvement. The allocation of immovable State property to the successor State on the basis of the geographical situation of the property was too much in favour of the successor State and was therefore unwarranted, unreasonable and inequitable. Those same reasons had prompted his delegation to vote in favour of the French amendment to article 13 (A/CONF.117/C.1/L.16 and Corr.1) to replace the words "connected with the activities of the successor State" by a reference to a direct and necessary link with the administration and management of the territory concerned. His delegation therefore supported the amendments to article 16 submitted by Pakistan and hoped that a textual change on the lines of the French amendment he had mentioned might be agreed upon.

60. Mr. MONNIER (Switzerland) said that his delegation suggested the deletion of paragraph 2 of article 16 for the reasons it had given during the discussion of the French amendments to article 13 (11th meeting). Article 13 had concerned the transfer of part of the territory of a State to another State, whereas paragraph 1 of article 16 covered a different situation in which part or parts of a territory separated and formed a separate State, as in the case of secession. Two situations were therefore possible under article 16, the first covered by paragraph 1, and the second covered by paragraph 2 in which part of a State separated and united with another State. The latter was precisely the case which his delegation had considered covered by article 13. The International Law Commission had indicated certain differences between the situation covered by article 13 and that covered by paragraph 2 of article 16, and those differences had been referred to in detail in the commentary on article 13 and in summary form in the commentary to article 16.

61. In his delegation's view, the differences mentioned were theoretical and abstract and therefore difficult to judge and determine in concrete terms. The French delegation had already indicated, during the

Committee's discussion of article 13 (*ibid.*), the doubtful nature of the requirement for consultation of the population, and had noted a minor boundary adjustment between France and Italy as an example. Consultation could therefore occur, not on the basis of international law, but on the basis of the internal law of the State or States involved, and particularly of their constitutional law. Political expediency might also dictate a need for consultation. He wondered therefore whether a lack of consultation would constitute a breach of the convention.

62. The Expert Consultant, on the other hand, had quoted, in connection with article 13 (*ibid.*), the case of a transfer of territory between Switzerland and France for the purpose of extension of Cointrin airport. However, there was a whole range of cases between that case and the theoretical case suggested by the International Law Commission of a territory of significant size, with a significant number of inhabitants and of a certain strategic and political importance, in which it would be difficult to decide whether article 13 or article 16, paragraph 2, should apply. Was the distinction to be on the basis of size of territory or number of inhabitants, and how was both the political and the strategic importance of the territory to be quantified? The Swiss delegation therefore saw very great practical difficulties in determining which situations were covered by which article.

63. Furthermore, even supposing that the differences indicated by the Commission were easily recognized, they would not qualify for separate legal provisions. The only criterion would be whether the detached territory constituted a new State or not. Such a distinction was neither justified nor necessary, could cause considerable difficulties in practice and would not contribute to international security, hence the Swiss delegation's suggestion that article 16, paragraph 2, should be deleted. His delegation did not put forward a formal proposal at present but reserved the right to revert to the matter later, depending on the progress made in the discussion of article 16 and the reaction of other delegations to the suggestion.

64. Mr. NATHAN (Israel) said that the observation which his delegation had made in connection with paragraph 2, subparagraph (*b*), of article 13 (*ibid.*) also applied to paragraph 1, subparagraph (*b*), of article 16. The phrase "connected with the activity of the predecessor State" was too vague and required further precision in the sense that the property should be principally connected with the activity of the predecessor State in respect of the territory to which the succession of States related. Similarly, the term "equitable proportion" in subparagraph (*c*) also required further precision and clarification. Flexibility had its advantages where it enabled decisions to be taken in accordance with the specific requirements of a specific situation, but excessive flexibility or inadequate precision in a legal text could lead to confusion and disputes. Suitable criteria were therefore required to govern the process of equitable apportionment of the property involved, such as, *inter alia*, the respective sizes of the territories concerned, the respective numbers of inhabitants and the respective economic resources, taking into account the extent of the property passing to the successor State under paragraph 1, subparagraph (*b*).

65. His delegation was unable to support the amendment of Pakistan because it saw no valid reason why the terms of paragraph 1, subparagraph (*b*) of article 16 should not be identical to the parallel paragraph 2, subparagraph (*b*) of article 13.

66. Mrs. THAKORE (India) said that article 16, as proposed by the International Law Commission, was basically acceptable to her delegation. While paragraph 1, subparagraph (*a*) of article 16 laid down a common rule relating to the passing of immovable State property, subparagraph (*b*) set forth the basic rule relating to movable State property which was applied consistently throughout section 2 of Part II of the draft.

67. The "equitable proportion" or "equitable compensation" rule laid down in paragraph 1, subparagraph (*c*), and paragraph 3 of article 16, which would apply in residual cases as a balancing factor, constituted a practical guideline. The Indian delegation was therefore unable to support the amendments submitted by Pakistan or the amendment suggested orally by the representative of Switzerland.

The meeting rose at 5.55 p.m.

17th meeting

Monday, 14 March 1983, at 10.05 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 16 (Separation of part or parts of the territory of a State) (*continued*)

1. Mr. ECONOMIDES (Greece) noted that article 16 contained as a central concept, which was also to be found in a number of other provisions, that of equity. Both the concept itself and the expressions "equitable proportion" and "equitable compensation" used in the article were very vague and likely to be difficult to apply in practice. It might even be questioned whether they had any legal meaning at all.

2. The International Law Commission was admittedly correct in its introduction to the draft articles in distinguishing equity from a proceeding *ex aequo et bono* (A/CONF.117/4, paras. 82 *et seq.*). When a rule of international law, whether customary or conventional, invoked equity, that concept was applied as a rule of